

CITY OF SAN JOSÉ, CALIFORNIA
Department of Planning, Building and Code Enforcement
801 North First Street, Room 400
San José, California 95110-1795

STAFF REPORT

Hearing Date/Agenda Number
P.C. 3/12/03 Item 3.e.

File Number
CP03-001 & ABC03-001

Application Type
Conditional Use Permit

Council District
1

Planning Area
West Valley

Assessor's Parcel Number(s)
307-11-009

PROJECT DESCRIPTION

Completed by: Darren McBain

Location: Northeast corner of Saratoga Avenue and Campbell Avenue (1600 Saratoga Avenue)

Gross Acreage: 2.1

Net Acreage: 2.1

Net Density: n/a

Existing Zoning: CG Commercial General

Existing Use: Retail Store (Target)

Proposed Zoning: CG Commercial General

Proposed Use: Retail with off-site sale of alcoholic beverages

GENERAL PLAN

Completed by: DM

Land Use/Transportation Diagram Designation
General Commercial

Project Conformance:
☒ Yes ☐ No
☐ See Analysis and Recommendations

SURROUNDING LAND USES AND ZONING

Completed by: DM

North: Commercial retail (Westgate shopping center)

CG Commercial General

East: Commercial retail (Westgate shopping center)

CG Commercial General

South: Commercial retail (El Paseo shopping center)

CG Commercial General

West: Commercial retail (West Valley shopping center)

CG Commercial General

ENVIRONMENTAL STATUS

Completed by: DM

☐ Environmental Impact Report found complete
☐ Negative Declaration circulated on
☐ Negative Declaration adopted on

☒ Exempt
☐ Environmental Review Incomplete

FILE HISTORY

Completed by: DM

Annexation Title: Pavne No. 2

Date: 9/18/58

PUBLIC AGENCY COMMENTS RECEIVED

Completed by: DM

Department of Public Works

None Received

Other Departments and Agencies

See attached memorandum from Police Department (Vice Unit), dated February 17, 2003.

GENERAL CORRESPONDENCE

None received

ANALYSIS AND RECOMMENDATIONS

BACKGROUND

The applicant, Target Corporation, is requesting a Conditional Use Permit to allow off-site sale of alcoholic beverages at an existing Target outlet in a shopping center ("Westgate") located on the northeast corner of Saratoga Avenue and Campbell Avenue. The Zoning Ordinance requires a Conditional Use Permit for off-sale of alcoholic beverages in the CG Commercial General Zoning District. A Liquor License Exception Permit is also required, because the California State Department of Alcoholic Beverage Control has determined that a proposed establishment involving the sale of alcoholic beverages is located in a census tract in which the ratio of existing liquor licenses to the tract's population is higher than average for the County.

The proposed use is located in an existing, approximately 167,00-square-foot Target retail store that was recently approved for expansion in 2001 (File No. H01-054). The project site is on a parcel located within, and surrounded by, the overall Westgate shopping center. The Target building is substantially surrounded by surface parking areas for the shopping center. Other nearby development includes the main structure to the north, apartments across Hamilton Avenue to the east, El Paseo de Saratoga shopping center and a single-room occupancy (SRO) residential building to the south, and West Valley shopping center to the west. Other businesses in the area that sell alcoholic beverages include the adjacent Safeway store in the Westgate center, a restaurant (Frankie, Johnny, and Luigi's) at West Valley shopping center to the west of the project site, and the Trader Joe's and Smart and Final stores at Westgate West shopping center, adjacent to West Valley shopping center.

The Director of Planning has determined that this project is exempt from environmental review under the provisions of Section 15301 of the State Guidelines for Implementation of the California Environmental Quality Act.

GENERAL PLAN CONFORMANCE

The proposed commercial use is consistent with the San José 2020 General Plan Land Use/Transportation Diagram designation of General Commercial.

ANALYSIS

The key issues analyzed for the proposed project are conformance to the Zoning Ordinance sections related to the off-sale of alcoholic beverages and to the requirements for issuance of an (ABC) Liquor License Exception Permit under Assembly Bill 2897. As described in greater detail below, it is staff's opinion that the proposed project adequately conforms to the criteria related to these permits.

Zoning Ordinance

The project proposes the sale of pre-packaged alcohol for off-site consumption. The Zoning Ordinance requires a Conditional Use Permit for off-sale alcohol in the CG Commercial General Zoning District. The Planning Commission may grant the Conditional Use Permit if it makes the following findings, where applicable:

1. For such a use at a location closer than 500 feet from any other such use either within or outside the City that the proposed location of the off-sale alcohol use would not contribute to an excess concentration of establishments which sell alcoholic beverages, or
2. For such a use at a location closer than 500 feet from any child care center, elementary school, secondary school, college or university, or one hundred fifty (150) feet from any residentially zoned property that the building in which the proposed use is to be located is situated and oriented in such a manner that would not adversely affect such residential and/or school use.

The project site is located within Census Tract 5062.02. Police Department staff determined that the subject site is not located in one of the 24 census tracts identified as problematic areas by City Council Resolution. Further, the attached memorandum from the Police Department Special Investigation/Vice unit confirmed that the shopping center is not located in an area with over a 20%

the issue of over-concentration, and that the proposed use adequately conforms to the intent of finding #1, above.

The nearest residential site is an SRO located approximately 400 feet from the subject site. The SRO was recently approved (File No. PD01-023) and is currently nearing completion of construction. The SRO is a “quasi-residential” land use that blends elements of apartment and hotel living and will cater to a mix of short-term and longer-term residents. However, the SRO is primarily oriented toward Campbell Avenue and is located across a public street. It is staff’s opinion that the proposed project would result in little or no change in terms of the Target site’s interface with the SRO. The subject site is not located within 300 feet of a public or private school.

Liquor License Exception Permit/Assembly Bill 2897

The applicant is also applying for a Liquor License Exception Permit. An Exception Permit is required for liquor license applicants that may be denied by the Department of Alcoholic Beverage Control (ABC) pursuant to Assembly Bill (AB) No. 2897, the Caldera Bill. As of January 1995, AB 2897 requires the ABC to deny an application for a liquor license “if issuance of that license would tend to create a law enforcement problem, or if the issuance would result in or add to an undue concentration of liquor licenses.” If the ABC determines that a liquor license application would result in an undue concentration, an applicant may request an Exception Permit from the City based on “public convenience and necessity.”

The Planning Commission may grant the Exception Permit if it makes the following findings:

1. The premises are not located in an existing Project Crackdown /Weed and Seed Area or similar areas that qualify for these programs pursuant to the City’s Neighborhood Revitalization Strategy.
2. The premises are not located within 300 feet of any public or private school.
3. The City’s Police Department has determined that the use would not pose a detriment to the immediate neighborhood or continue current law enforcement problems.

In this case, ABC and Police staff have determined that the issuance of a Liquor License would result in an “undue” concentration of liquor licenses in the census tract in which the site is located. An Exception Permit is therefore required. The project conforms to the requirements enumerated above, in that the premises are not located in any of the listed program areas, are not located within 300 feet of a school, and (per the Police memo for the project) are not expected to pose a detriment to the

The Planning staff recommends that the Planning Commission approve the requested Conditional Use Permit and include the following findings and conditions in its Resolution.

The Planning Commission finds that the following are the relevant facts regarding this proposed project:

1. The project site is located on the southeast corner of Saratoga Avenue and Campbell Avenue (1600 Saratoga Avenue)
2. The site has a designation of General Commercial on the adopted San José 2020 General Plan Land Use/Transportation Diagram.
3. The project site is located in the CG Commercial General Zoning District.
4. Under the provisions of Section 15301 of the State Guidelines for Implementation of the California Environmental Quality Act (CEQA), this project is exempt from the environmental review requirements of Title 21 of the San José Municipal Code, implementing the California Environmental Quality Act of 1970, as amended. The project will not have a significant adverse effect on the environment.
5. The subject site is generally surrounded by commercial land uses
6. The project proposes the sale of alcoholic beverages for off-site consumption.
7. The Zoning Ordinance requires a Conditional Use Permit for off-sale alcohol in the CG-Commercial General Zoning District.
8. A Conditional Use Permit may be issued for the off-sale of alcoholic beverages if the Planning Commission makes the findings required by San Jose Municipal Code Sections 20.08.900 and 20.100.720.
9. The project consists of the off-sale of alcoholic beverages in an existing, approximately 167,000-square-foot retail building.
10. The proposed use is located within 500 feet of another establishment that sells alcoholic beverages.

3. The proposed project is in compliance with the California Environmental Quality Act.
4. Although the subject site is located within 500 feet of another off-sale alcohol use, the project is consistent with the Zoning Ordinance criteria for approval of off-sale alcoholic beverages in that this permit includes the required findings for issuance of a Liquor License Exception Permit.
5. Although the subject site is located within 500 feet of a residential land use, the off-sale of alcoholic beverages will not adversely affect the surrounding residential neighborhood in that the site is adequately buffered by parking areas, a public street, and building orientation

Finally, based upon the above-stated findings and subject to the conditions set forth below, the Planning Commission finds that:

1. The proposed use at the location requested will not
 - a. Adversely affect the peace, health, safety, morals or welfare of persons residing or working in the surrounding area; or
 - b. Impair the utility or value of property of other persons located in the vicinity of the site; or
 - c. Be detrimental to public health, safety or general welfare; and
2. The proposed site is adequate in size and shape to accommodate the yards, walls, fences, parking and loading facilities, landscaping and other development features prescribed in this title, or as is otherwise required in order to integrate said use with the uses in the surrounding areas; and
3. The proposed site is adequately served:
 - a. By highways or streets of sufficient width and improved as necessary to carry the kind and quality of traffic such use would generate; and
 - b. By other public or private service facilities as are required.
4. The subject site is not located in an existing Project Crackdown/Weed and Seed Area, Project Crackdown Area, or Strong Neighborhoods Initiative (SNI) Area or similar areas that qualify for these programs on the City's Neighborhood Revitalization Strategy Criteria.
5. The proposed use is not located within 300 feet of any public or private school.

CONDITIONS PRECEDENT

This Conditional Use Permit and Liquor License Exception Permit shall have no force or effect and the subject property shall not be used for the hereby permitted uses unless and until all things required by the below-enumerated precedent conditions shall have been performed or caused to be performed and this Resolution has been recorded with the County Recorder.

1. **Acceptance and Payment of Recording Fees.** The "Acceptance of Permit and Conditions" form shall be **signed, notarized, and returned** to the Department of City Planning within **60 days** from the date of issuance of the resolution granting the permit. *Failure to do so will result in this permit automatically expiring regardless of any other expiration date contained in this permit.* Fees for recording a Certificate of Permit with the Recorder for the County of Santa Clara must be submitted along with the Acceptance Form.

CONCURRENT CONDITIONS

The subject property shall be maintained and utilized in compliance with the below-enumerated conditions throughout the life of the permit:

1. **Sewage Treatment Demand.** Chapter 15.12 of Title 15 of the San José Municipal Code requires that all land development approvals and applications for such approvals in the City of San José shall provide notice to the applicant for, or recipient of, such approval that no vested right to a Building Permit shall accrue as the result of the granting of such approval when and if the City Manager makes a determination that the cumulative sewage treatment demand of the San José-Santa Clara Water Pollution Control Plant represented by approved land uses in the area served by said Plant will cause the total sewage treatment demand to meet or exceed the capacity of San José-Santa Clara Water Pollution Control Plant to treat such sewage adequately and within the discharge standards imposed on the City by the State of California Regional Water Quality Control Board for the San Francisco Bay Region. Substantive conditions designed to decrease sanitary sewage associated with any land use approval may be imposed by the approval authority.
2. **No New Construction.** No additional construction or development is approved under this permit.
3. **Nuisance.** This use shall be operated in a manner which does not create a public or private nuisance. Any such nuisance must be abated immediately upon notice by the City.

7. **Compliance with Other Permits.** The developer shall comply with all terms and conditions of Site Development Permit (File No. H01-054).
8. **Alcoholic Beverage Control.** The off-sale of alcoholic beverages is allowed in conformance with the requirements of the Department of Alcoholic Beverage Control (ABC). The applicant shall obtain all necessary permits maintain full compliance and in good standing with the Department of Alcoholic Beverage Control.

CONDITIONS SUBSEQUENT

1. **Permit Expiration.** This Conditional Use Permit/Liquor License Exception Permit shall automatically expire two years from and after the date of adoption of the Resolution by the Planning Commission, or by the City Council on appeal, granting this Permit, if within such two-year period, the proposed use of this site or the construction of buildings has not commenced, pursuant to and in accordance with the provisions of this Conditional Use Permit/Liquor License Exception Permit. The date of adoption is the date the Resolution granting this Conditional Use Permit/Liquor License Exception Permit is approved by the Planning Commission. However, the Director of Planning may approve a Permit Adjustment to extend the validity of this Permit for a period of up to two years. The Permit Adjustment must be approved prior to the expiration of this Permit.
2. **Revocation, Suspension, Modification.** This Conditional Use Permit/Liquor License Exception Permit may be revoked, suspended or modified by the Planning Commission, or by the City Council on appeal, at any time regardless of who is the owner of the subject property or who has the right to possession thereof or who is using the same at such time, whenever, after a noticed hearing in accordance with Part 3, Chapter 20.44, Title 20 of the San José Municipal Code it finds:
 - a. A violation of any conditions of the Conditional Use Permit/Liquor License Exception Permit was not abated, corrected or rectified within the time specified on the notice of violation; or
 - b. A violation of any City ordinance or State law was not abated, corrected or rectified within the time specified on the notice of violation; or
 - c. The use as presently conducted creates a nuisance.

c: Engineering Services